

# STATE OF VERMONT BOARD OF MEDICAL PRACTICE

In re: Gene W. Wu, M.D.

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Docket No. MPS 65-0603

## **SUPERSEDING AGREEMENT AS TO MEDICAL PRACTICE**

NOW COME Gene W. Wu, M.D., (Respondent), and the State of Vermont, by and through Attorney General William H. Sorrell and undersigned counsel, Assistant Attorney General James S. Arisman, and agree and stipulate as follows:

1. Gene W. Wu, M.D., holds Vermont Medical License Number 042-0009913, issued by the Board of Medical Practice on August 24, 1999. Respondent, an anesthesiologist, holds privileges at the Copley Hospital of Morrisville, Vermont.

2. Jurisdiction vests with the Vermont Board of Medical Practice (Board) by virtue of 26 V.S.A. § 1353 and other provisions of Chapter 23 of the Vermont statutes.

### **I. Background.**

3. Respondent took a voluntarily leave of absence from practice activities in June, 2003 due to medical disability. Respondent subsequently signed a Cessation of Practice Agreement with the Vermont Board of Medical Practice, entered and effective August 6, 2003, due to his medical disability and ongoing treatment. Subsequently, Respondent's medical condition improved, and he resumed practice, subject to certain limitations and requirements, as set forth in agreements with the Board dated September 3, 2003, October 1, 2003, and November 11, 2003.

4. Now, based on the continued improvement of Respondent's medical condition, the advice of his treating doctor and peers, and review of his medical practice and care of patients,<sup>1</sup> Respondent has determined after consultation that he shall voluntarily enter into this superseding practice agreement with the Vermont Board of Medical Practice. The instant document supersedes and replaces any and all prior agreements between Respondent and the Board.<sup>2</sup>

5. The instant agreement addresses the number of hours each week that Dr. Wu shall practice, his "call" duties, and provisions related to his practice of anesthesiology in a hospital setting. The instant agreement is subject to Dr. Wu's continuing safe and satisfactory performance of medical responsibilities. Pertinently, since his return to work in early September 2003, Respondent's intra-operative skills and decision-making have been reported to be at the appropriate level of performance.

6. After consultation, Dr. Wu has developed with peer practitioners and administrators at Copley Hospital a plan to increase his hours of work and allow him to practice with increased independence. Dr. Wu, his colleagues, and his treating doctor concur in the expectation that such steps will be consistent with patient safety, Dr. Wu's continued medical progress, and his general well-being.

7. Respondent acknowledges that he has been offered the opportunity to consult an attorney and receive legal counsel regarding this matter. Respondent voluntarily and knowingly is agreeing to the terms and conditions set forth herein.

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1. Those monitoring Dr. Wu's performance, pursuant to the terms of his earlier practice agreements with the Board, have expressed no concerns regarding patient safety or quality of care.

2. All such prior agreements are now void and without effect.

8. In the unlikely event that circumstances might require such action, Respondent expressly agrees and reiterates here that upon any written or oral request to him by the Vermont Board of Medical Practice, in its sole discretion, he shall immediately cease and desist from any and all practice of medicine, and any and all prescribing. A request for cessation of practice may be made by the Board at any time and for such reason(s) as the Board may deem sufficient, in its sole discretion.

9. In lieu of any such cessation of all practice activities, Respondent may be offered the opportunity to agree to the imposition of other terms and conditions upon his license to practice to protect patients and the public, in the Board's sole discretion.

## **II. Conditions of Licensure.**

10. Respondent's Vermont license to practice medicine has been and will continue to be designated as "CONDITIONED" until further order of the Board.

### **A. Hours of Work; "Call" Responsibilities.**

11. Pursuant to the terms of this agreement Respondent may continue to practice medicine on a limited basis. The parties agree that such practice by Respondent shall consist of less than 50 hours per week of work involving patient contact, regardless of location.<sup>3</sup> The parties agree that the total number of hours to be worked normally shall not require Dr. Wu to be present at the hospital in excess of six days per week. Any occurrence related to Respondent's practice requiring the unplanned assistance or intervention of other physicians

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3. Normally, Respondent's work schedule will require 50 hours or less per week. Respondent acknowledges that the Board may review his work schedules and hours on "call" and the hours actually worked. He agrees that the Board, in its sole discretion, may act pursuant to the provisions of Paragraph 15.

or surgical support staff shall be reported immediately in writing to the Board by Respondent and by appropriate staff of Copley Hospital.

12. Respondent may carry out limited "call" duties at Copley Hospital. He shall resume such call duties on the following graduated basis. Respondent shall begin his call duties by being designated for one time per week for a trial period of at least four weeks. Thereafter, during the next following two week period, Respondent may add one additional call day per week. Finally, during the next following two week period, Respondent may add one additional call day per week. This plan shall permit Respondent to be assigned to and work an average of six days of call during any two- week period.

13. Respondent shall plan ~~work~~ his schedules with peers and administrators of Copley Hospital so that his schedule will be consistent with the assignment of an average of six "call" days during any two-week period. Respondent shall maintain an accurate and complete written record identifying all scheduled call assignments and all hours actually worked.<sup>4</sup> Upon request, Respondent shall promptly produce this record to the Board or its agents for review.

14. The parties agree that Respondent's participation in meetings and conferences related to his hospital duties shall not be deemed to be the practice of medicine and shall not be counted against the maximum total number of hours to be worked per week. However, Respondent agrees that his participation in such non-practice meetings and conferences shall be limited and that he shall endeavor with his employer and colleagues to reasonably limit such involvement on his part. Non-practice matters shall not be permitted to interfere with Respondent's continued treatment.

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4. The written record shall be current in content and include dates and times actually worked

15. Respondent agrees and understands that Copley Hospital may notify the Board of Medical Practice at any time regarding any possible concern(s) as to Respondent's work schedule, call assignments, quality of patient care, and ability to practice medicine safely. Respondent agrees that the Board of Medical Practice, as deemed necessary, in its sole discretion, may act to reasonably reduce and limit the number of hours permitted under paragraph 11, above, and the number of "call" hours permitted under paragraphs 12 and 13.

#### **B. Medical Prognosis.**

16. Respondent's practice of medicine under this agreement is based upon the mutual agreement of Respondent, his colleagues, his treating practitioner(s), and the Board of Medical Practice with regard to continuation of his improved medical condition. Respondent agrees that he shall immediately cease and desist from the practice medicine if any of his treating practitioners deem such practice by him to be inconsistent with patient safety or Respondent's course of treatment and well-being. If requested, Respondent agrees that he shall undergo such assessment or evaluation as might be required by the Board, in its sole discretion. Respondent agrees that he shall ensure that his treating physician(s) shall provide the Board at least quarterly reports regarding his involvement in treatment, prognosis, and ability to practice medicine with reasonable care, skill, and safety.

#### **C. Continued Treatment.**

17. Respondent agrees to pursue in good faith and without interruption such care and treatment of his medical condition as may be recommended to him by his treating professional(s). The Board may review and, in its sole discretion, approve or disapprove the

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or on call and clearly identify the nature of Respondent's activities for each entry.

frequency of treatment or any proposed plan of treatment. Respondent shall bear all costs of care and treatment, assessment and/or evaluation, and monitoring and reporting but shall be permitted to share such costs with third parties, subject to Board review and approval.

18. Respondent agrees that he shall execute any and all waivers that may be required for the Board, its staff, or agents to review all assessments, evaluations, diagnoses, records, or reports regarding his care and treatment and his medical condition. Respondent already has signed a current general authorization for the release of his medical records and information to the Board. Respondent agrees not to terminate such authorization and to execute such further authorizations for the release of his medical records and information as may be required by the Board. Consistent with this authorization Respondent also agrees that the Board or its agents may communicate orally to obtain information from practitioners involved in his care and treatment.

19. Respondent agrees and assures that in every case his medical treatment and well-being will receive first priority in establishing his work schedule with his employing institution.

#### **D. Due Process; Further Agreements.**

20. Respondent shall retain all rights to due process regarding the status of his medical license, his medical condition, and determination of his ability to practice medicine safely. The parties agree that Respondent may apply for modification or relief from the terms and conditions of this agreement, with regard to his practice of medicine, if and when he and his treating practitioners agree that such modification would be appropriate and consistent with patient safety and Respondent's well-being.

21. The Board agrees that this agreement may be modified at a later date, provided the Board is satisfied that Dr. Wu continues to be medically able to practice safely and meets all other usual and customary requirements for licensure and practice as a physician in the State of Vermont. Respondent also understands and agrees that his compliance with the terms and conditions herein and with the recommendations of those providing care and treatment to him may be considered in any subsequent determination or proceeding before the Board regarding his license.

22. Consistent with Paragraphs 20 and 21, above, Respondent agrees that the Board, in its sole discretion, may consider and act upon any petition from Respondent at a later date for modification or relief as to the terms herein, should the circumstances of Respondent's medical condition or treatment so warrant.

**E. Practice Site; Employment; Structured Group Setting.**

23. Respondent agrees that he shall practice medicine only in a structured group setting in which he shall have frequent and regular contact and interaction with other physicians. Respondent agrees that while so employed he shall maintain regular communication with his Supervising Physician. See Paragraphs 27-30, below. Respondent agrees that he shall petition in advance for Board approval of any proposed change of employer, practice site, or work schedule. Such petition shall be in a form and manner satisfactory to the Board.

24. Any such group practice or institution, as referred to above, shall be considered provisionally approved upon notice and petition from Respondent, subject to actual approval or disapproval at a later date, in the sole discretion of the Board. As

appropriate, Respondent agrees to present to the Board a petition identifying the location(s) where he seeks to practice, his proposed employer, and proposed work schedule. He agrees that he shall not see patients or practice at any other location without the approval of the Board. Moreover, Respondent agrees that he shall not practice medicine in any form or manner outside the scope of his employment agreement or affiliation with such group practice or institutional employer and his assigned duties there.

25. The parties expressly agree that Respondent's continuing employment at a Board-approved group practice or institutional employer is a **material term** of this Agreement. The parties agree that any interruption or cessation of Respondent's employment relationship with such group practice or institutional employer shall constitute a circumstance of non-compliance by Respondent with the terms and conditions of this agreement and shall require Respondent voluntarily and immediately to cease all practice activities in the State of Vermont, pending further order of the Board.

26. Respondent expressly agrees that he shall comply fully with the terms of any and all contractual or other practice agreements with his employing institution. Respondent agrees that the terms and conditions of all such agreements shall be incorporated by reference as required elements of this agreement with the Board, to the extent that they are not inconsistent with the terms and purposes of this agreement.

#### **F. Supervising Physician.**

27. Respondent agrees he practice medicine only so long as he is meeting regularly with a Board-approved Supervising Physician at the practice location where Respondent works. Any proposed Supervising Physician shall be considered provisionally approved for



the period of time between the filing of a petition by Respondent seeking approval and the date of the Board's actual approval or denial of the petition. It is the responsibility of the Respondent to take reasonable steps to ensure that the provisionally approved Supervising Physician(s) shall comply with any reporting requirements. The Supervising Physician shall be fully informed of the terms of this agreement. Respondent shall provide a copy of this agreement to the Supervising Physician.

28. The Supervising Physician(s) shall meet in person with Respondent at least two time each week and shall discuss Respondent's care of patients, any problems arising with respect to patient care, and Respondent's treatment and ability to practice medicine safely. Such meetings shall be of such duration and scope as to permit substantive communication regarding Respondent's practice activities and his own medical needs. Respondent agrees that other practitioners within his work setting may also communicate with the Supervising Physician and with the Board regarding the matters identified above.

29. The Supervising Physician shall submit at least quarterly written reports to the Board, regarding Respondent's practice activities and Respondent's ability to practice medicine with reasonable care, skill and safety. Such written reports shall continue for so long as this agreement remains in effect or until the Supervising Physician ceases to provide the services described herein.

30. If the Board does not approve or withdraws its approval of a Supervising Physician proposed by Respondent, Respondent must confer with the Board and thereafter propose another Supervising Physician. Respondent may not practice medicine in any location without an approved Supervising Physician as described herein.

31. Respondent agrees that he shall provide a complete copy of this agreement to all employers, treating practitioners, and individuals involved in monitoring or reviewing his practice activities.

### **III. Other Terms and Conditions as to Implementation.**

32. The parties agree that this Agreement shall be a public document, shall be made part of Respondent's licensing file, and may be reported to other licensing authorities and/or entities including, but not limited to, the National Practitioner Data Bank and the Federation of State Medical Boards. Any such reporting shall clearly indicate that this Agreement is a **non-disciplinary** matter.

33. Respondent agrees that he has read and carefully considered all terms and conditions herein and agrees that these may be adopted and shall be enforceable as an order of the Board, pursuant to 3 V.S.A. § 809(d) and 26 V.S.A. § 1353(4). He agrees to accept and be bound by these terms and conditions until such time as he may be expressly relieved of these or they are modified in writing by the Board. Respondent agrees to continue to adhere fully to the terms of any written "assurances" previously provided by him and also to the terms of any practice agreements or contracts he has executed with Copley Hospital to the extent that a term is not inconsistent with the provisions of this agreement.

34. This agreement is subject to review and acceptance by the Vermont Board of Medical Practice and shall not become effective until presented to and approved by the Board. If the Board rejects any part of the instant agreement, the entire agreement shall be considered void. However, if the instant agreement is deemed acceptable, the parties request that the Board enter an order adopting the terms and conditions set forth herein. Respondent

agrees that the Board of Medical Practice shall retain jurisdiction in this matter and may enforce as necessary the terms and conditions herein and those of any other assurances(s) he may have with the Vermont Board of Medical Practice, pursuant to 26 V.S.A. §§ 1354(25), 1356 & 1361 or other statutory authority.

Dated at Montpelier, Vermont, this 30 day of January, 2004.

STATE OF VERMONT

WILLIAM H. SORRELL  
ATTORNEY GENERAL

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**JAMES S. ARISMAN**  
Assistant Attorney General

Dated at MORRISVILLE, Vermont, this 5<sup>th</sup> day of JANUARY, 2004.

GENE W. WU, M.D.  
Respondent

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FOREGOING, AS TO GENE W. WU, M.D.,  
APPROVED AND ORDERED  
VERMONT BOARD OF MEDICAL PRACTICE

of the AT movement, ID

D.K. King  
 President of the Board  
 of Directors  
 Margaret E. King

DATED: \_\_\_\_\_

ENTERED AND EFFECTIVE: \_\_\_\_\_

Source: *U.S. Census Bureau, 1960 Census of the United States, General Population and Housing Characteristics, Series PC80-1A, Table 100-1, 100-2, 100-3, 100-4, 100-5, 100-6, 100-7, 100-8, 100-9, 100-10, 100-11, 100-12, 100-13, 100-14, 100-15, 100-16, 100-17, 100-18, 100-19, 100-20, 100-21, 100-22, 100-23, 100-24, 100-25, 100-26, 100-27, 100-28, 100-29, 100-30, 100-31, 100-32, 100-33, 100-34, 100-35, 100-36, 100-37, 100-38, 100-39, 100-40, 100-41, 100-42, 100-43, 100-44, 100-45, 100-46, 100-47, 100-48, 100-49, 100-50, 100-51, 100-52, 100-53, 100-54, 100-55, 100-56, 100-57, 100-58, 100-59, 100-60, 100-61, 100-62, 100-63, 100-64, 100-65, 100-66, 100-67, 100-68, 100-69, 100-70, 100-71, 100-72, 100-73, 100-74, 100-75, 100-76, 100-77, 100-78, 100-79, 100-80, 100-81, 100-82, 100-83, 100-84, 100-85, 100-86, 100-87, 100-88, 100-89, 100-90, 100-91, 100-92, 100-93, 100-94, 100-95, 100-96, 100-97, 100-98, 100-99, 100-100.*

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